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EXAMINER				
HAUGLAND, SCOTT J				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/502,230

**Applicant(s)**

JENKINS ET AL.

**Examiner**

Scott Haugland

**Art Unit**

3654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 13 is objected to because of the following informalities: It appears that "liner" should be --linear-- on line 1 of the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11-13 provide for the use of the apparatus of claims 1-4 and 6-9, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Contrary to claims 12 and 13, claim 1 is not directed to a method of processing.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 11-13 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5/1, 6, 7, 11/1, 11/4, 11/6, 11/7, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Basford (U.S. Pat. No. 3,065,893).

Basford discloses a caterpillar traction apparatus comprising first and second extensive traction members (26, 32) driven by first through fourth rotatable members (28, 30, 34, 36). The rotatable members are addressed by drive means 52. The first and third rotatable members can be driven at a different speed than the second and fourth rotatable members due to the inherent elasticity of the traction members (26, 32). A speed difference would be inherent in the operation of the apparatus due to the load on the traction apparatus and rollers. The caterpillar traction apparatus processes a linear member 58.

With regard to claims 12 and 13, the linear member 58 is compressed or extended depending on the direction of travel of the caterpillar traction apparatus (col. 3, lines 4-30).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 5/2, 5/3, 11/2, and 11/3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basford (U.S. Pat. No. 3,065,893) in view of McGinnis (CA 1161385).

Basford is described above.

Basford does not disclose that the speed difference is between 1% and 10%.

McGinnis teaches making a conveyor belt capable of being elongated by 5%.

It would have been obvious to provide Basford with a belt that is capable of being elongated by 5% as taught by McGinnis to prevent sagging of the mounted belt. The resulting apparatus would be capable of operating with the claimed speed difference.

Claims 8-10, 11/8, and 11/9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basford (U.S. Pat. No. 3,065,893) in view of McGinnis (CA 1161385) and FR 2425394.

Basford does not disclose that the traction members comprise rubber and are capable of 10% elongation.

McGinnis teaches forming a traction member of rubber to provide elasticity and teaches making a traction member capable of being elongated.

FR 2425394 teaches making a traction member of a polymer (elastomer) capable of being elongated 10%. The elastomer is, by definition, compressible.

It would have been obvious to provide Basford with a traction member that is capable of being elongated as taught by McGinnis to facilitate mounting and prevent sagging of the belt in operation. It would have been obvious to form the traction

member of a compressible polymer that is capable of being elongated as by 10% as taught by FR 2425394 to facilitate mounting of the belt in a tensioned state.

With regard to claim 9, it would have been obvious to make the belt of rubber as taught by McGinnis to provide elasticity.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brown (U.S. Pat. No. 3,610,500), Koch (U.S. Pat. No. 5,368,212), and McElvy (U.S. Pat. No. 4,620,409) are cited to show adjustable caterpillar traction apparatus. Bechtloff et al (U.S. Pat. No. 3,880,274) is cited to show a caterpillar traction apparatus having layered traction members. Keller (U.S. Pat. No. 6,244,846) is cited to show a caterpillar traction apparatus having extensible elastic traction members. Ballinger (U.S. Pat. No. 4,118,179) is cited to show a traction member mounted on differentially driven rollers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Haugland whose telephone number is (571)272-6945. The examiner can normally be reached on Mon. - Fri., 10:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SJH/  
12/4/08  
/Peter M. Cuomo/  
Supervisory Patent Examiner, Art Unit 3654